

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**
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New York, New York 10175
(212) 292-4314
Eric Stuart (ES-1265)
Attorneys for Defendant,
Midtown Air Conditioning
and Ventilation, Ltd.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANGEL VARGAS, FELIX BONILLA,
RYAN MCKENZIE, BERNARDO
RAMIREZ and SIMON NORALES

Plaintiff,

v.

MIDTOWN AIR CONDITION AND
VENTILATION, LTD.

Defendant.

Case No.: 1:07-cv-03343-RMB
Honorable Richard M. Berman, U.S.D.J.

Civil Action

**SUPPLEMENTAL AFFIDAVIT OF
ERIC STUART
IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Document Electronically Filed

I, ERIC STUART, hereby state and declare:

1. I am an attorney with the law firm of Ogletree, Deakins, Nash, Smoak, & Stewart, P.C., counsel of record for Midtown Air Conditioning and Ventilation, LTD. I have personal knowledge of the facts contained in this Affidavit.

2. Attached as Exhibit A is a true and correct copy of Plaintiffs' First Set of Interrogatories to Defendant, which is the only set of interrogatories issued by Plaintiffs during this litigation.

3. Attached as Exhibit B is a true and correct copy of Plaintiffs' First Set of Document Demands to Defendant, which is the only set of documents issued by Plaintiffs during this litigation.

4. Attached as Exhibit C is a true and correct copy of additional pages from the Deposition of Plaintiff Angel Vargas, cited in Defendant's reply brief.

5. Attached as Exhibit D is a true and correct copy of additional pages from the Deposition of Plaintiff Simon Norales, cited in Defendant's reply brief.

6. Attached as Exhibit E is a true and correct copy of additional pages from the Deposition of Ryan McKenzie, cited in Defendant's reply brief.

7. Attached as Exhibit F is a true and correct copy of additional pages from the Deposition of Bernardo Ramirez, Volume I, cited in Defendant's reply brief.

8. Attached as Exhibit G is a true and correct copy of additional pages from the Deposition of Felix Bonilla, cited in Defendant's reply brief.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on this Ninth Day of June, 2008, in Morristown, New Jersey.

/s/ Eric Stuart

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANGEL VARGAS, FELIX BONILLA, RYAN MCKENZIE,
BERNARDO RAMIREZ and SIMON NORALES,

Plaintiffs

-Against-

07-3343

MIDTOWN AIR CONDITION AND
VENTILATION, LTD.,

Defendant

-----X

PLAINTIFFS' FIRST SET OF INTERROGATORIES
TO DEFENDANT

Plaintiffs, by their counsel, LAW OFFICES OF AMBROSE W. WOTORSON, request, pursuant to Federal Rule of Civil Procedure 33 that defendant respond to the following interrogatories, within 30 days, in accordance with the following definitions and instructions:

DEFINITIONS AND INSTRUCTIONS

Unless otherwise specified, the terms used in these Requests shall have the following meanings:

1. "Plaintiffs" refer to **ANGEL VARGAS, FELIX BONILLA, RYAN MCKENZIE, BERNARDO RAMIREZ and SIMON NORALES.**
2. "Defendant" refers to **MIDTOWN AIR CONDITION AND VENTILATION, LTD.**
3. The term "document" means any written, printed, typed, drawn, punched, taped, filmed, recorded or graphic matter, including drafts, which is or was in your possession, custody or control, or known by you to exist, including, but not limited to, any account, record, book, pamphlet, brochure, catalog, periodical, publication, advertisement, schedule, list, manual, letter, correspondence, telegram, telephone record, memorandum, contract, lease, invoice manifest, purchase order, ticket, log, computer record, bulletin, study, survey, call report, sales letter, chart, graph, index, data sheet, inter- and intra-company communication, report, plan, work sheet, note, bill, check, bank statement, ledger, journal, travel record, desk calendar, minutes, transcript, accounting record, financial record, bookkeeping record, photograph, tape recording, video tape

or other form of data compilation. This definition includes all documents for which privilege is claimed. If copies, reproductions or facsimiles of a document are not identical by reason of handwritten notations, initials, identification marks or any other modification, each such non-identical copy is a separate document within the meaning of this definition.

4. "Communication" means any transfer or exchange between two or more persons of any information whether by written or oral means, including, but not limited to, personal conversations, correspondence, telephone calls and telegrams. This definition includes all communications for which you claim privilege.

5. "Identify" and "state the identity of" mean:

a. When used with reference to a natural person, to state: (i) the person's full name; (ii) his or her present or last known business address and telephone number; and (iii) his or her present or last known home address and telephone number.

b. When used with reference to an institution, organization, or business entity, to state: (i) the entity's legal name; and (ii) the location of its principal place of operation and main telephone number.

c. When used with reference to a document, whether or not that document is presently in existence, to either produce that document or state: (i) the identity of the person who signed it or over whose name it was issued; (ii) the date of the document or, if undated, the date it was created; (iii) the nature and substance of the document or writing with sufficient particularity to enable the document to be identified; (iv) the identity of each person who created it or received an original or copy of it; (v) the present or last known location and custodian of the document of any copies; and (vi) if lost or destroyed, the date when lost or destroyed.

d. When used with reference to a communication, to state: (i) the date when and place where it took place; (ii) the means of communication (e.g., telephone, correspondence, personal conversation); (iii) the identity of the participants; and (iv) the substantive information communicated.

6. "Date" means the exact day, month, and year if ascertainable, or, if not, your best approximation thereof.

7. In the context of an Interrogatory or a response thereto, whenever necessary to bring within the scope of the Interrogatory information that would otherwise be excluded therefrom, the singular shall mean plural, and the masculine gender shall mean the feminine, and vice versa.

8. "And" and "or" shall be construed either disjunctively or conjunctively so as to require the inclusion of materials or information that would otherwise be excluded.

9. If defendant object to any portion of an Interrogatory, provide all information called for by those portions of the Interrogatory to which defendant do not object. For those portions of any Interrogatory to which defendant object, state in detail the reason for such objection. With

respect to each document, or portion thereof, withheld from production, please state the nature of the document (e.g., letter, memorandum, computer printout, etc.) and the date of the document, identifying the persons who sent and received the original or a copy of the document, and state the subject matter of the document.

10. If defendant cannot answer any of the following Interrogatories in full, after exercising due diligence to secure the information necessary to do so, so state and answer to the fullest extent possible, specifying defendant inability to answer the remainder and stating whatever information or knowledge defendant have concerning the unanswered portions.

11. Each Interrogatory not only calls for information known to defendant, but also calls for all information available to defendant through reasonable inquiry, including inquiry of defendant's representatives and agents.

12. The terms "relating to," "regarding," and "referring to" shall be interpreted broadly, including both explicit and implicit reference, and meaning (without limitation) relating to, regarding, referring to, constituting, defining, discussing, containing, construing, embodying, reflecting, stating, dealing with, prepared in contemplation of, prepared in connection with, prepared as a result of, or in any way pertaining to.

13. These discovery requests are of a continuing nature, so as to require supplemental responses in accordance with Federal Rule of Civil Procedure 26(e).

14. In the event any information is withheld by defendant on the basis of any claim of privilege or of attorney work product, state in writing with respect to all such information withheld particulars sufficient to permit a determination of the validity of that claim, including: (a) the name and position of each individual who has knowledge of the information; (b) the subject matter of the information; and (c) the grounds for the claim of privilege or attorney work product.

INTERROGATORIES:

INTERROGATORY NO 1. Identify all individuals who have information about Defendant's ability or inability to pay punitive damages.

INTERROGATORY NO 2. Identify all individuals who have information about Defendant's overall financial health and profitability in the years 2003, 2004, 2005, and the present.

INTERROGATORY NO 3. Identify each person whom defendant expects to call as a witness at trial in this matter.

INTERROGATORY NO. 4. Identify each person whom defendant expects to call as an expert witness at trial and identify the following for each:

(a) The subject matter on which the expert is expected to testify;

(b) Identify all documents relating to each expert's resume or curriculum vitae.

(c) Identify all documents relating to each expert's opinions relating to the instant matter.

INTERROGATORY NO. 5. Identify each person defendant believes possess any knowledge relating to (a) the allegations raised in plaintiffs' lawsuit, (b) defendant's Answer to plaintiffs' lawsuit, or (c) any of defendant's affirmative defenses, or (d) defendant's alleged legitimate business reasons for the alleged adverse action(s) taken against plaintiffs as referenced plaintiffs' complaint and (e) if applicable, defendant's counterclaim(s). (f) Identify all documents which support this response.

INTERROGATORY NO. 6. If defendant claims that plaintiffs' performances were inadequate or substandard in any respect, or that plaintiffs engaged in any misconduct, please identify all documents which support these contentions.

INTERROGATORY NO. 7. If defendant claims that plaintiffs' performances were inadequate or substandard in any respect, or that plaintiffs engaged in any misconduct, please identify all persons defendant believes possess information regarding these contentions.

INTERROGATORY NO. 8. Identify all witnesses with knowledge of the legitimate business reasons for defendant's alleged adverse employment action(s) against plaintiffs as referenced in plaintiffs' complaint.

INTERROGATORY NO. 9. Identify all individuals by name and last known address, whom defendant interviewed in connection with their investigation(s) of plaintiffs' claims.

INTERROGATORY NO. 10. Identify by names, national origins and races, all similarly situated individuals who replaced plaintiffs after their terminations.

INTERROGATORY NO. 11. Identify by names, national origins and races, all similarly situated individuals who remained employed with defendant, after plaintiffs' terminations.

INTERROGATORY NO. 12. Identify by names, national origins and races, all similarly situated individuals hired by defendant, after plaintiffs' terminations.

Dated: Brooklyn, New York
July 31, 2007

Respectfully Submitted,

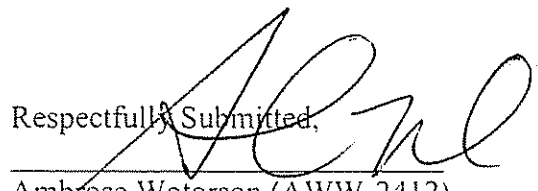

Ambrose Wotorson (AWW-2412)
26 Court Street
Suite 1811
Brooklyn, New York 11242
(718) 797-4861

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANGEL VARGAS, FELIX BONILLA, RYAN MCKENZIE,
BERNARDO RAMIREZ and SIMON NORALES,

Plaintiffs

-Against-

07-3343

MIDTOWN AIR CONDITION AND
VENTILATION, LTD.,

Defendant

-----X

PLAINTIFFS' FIRST SET OF DOCUMENT DEMANDS
TO DEFENDANT

Plaintiffs, by their counsel, LAW OFFICES OF AMBROSE W. WOTORSON, request pursuant to Federal Rule of Civil Procedure 34, that defendant respond to the following document demands, within 30 days, in accordance with the following definitions and instructions:

DEFINITIONS AND INSTRUCTIONS

Unless otherwise specified, the terms used in these Requests shall have the following meanings:

1. "Plaintiffs" refer to **ANGEL VARGAS, FELIX BONILLA, RYAN MCKENZIE, BERNARDO RAMIREZ and SIMON NORALES.**
2. "Defendant" refers to **MIDTOWN AIR CONDITION AND VENTILATION, LTD.**

3. The term "document" means any written, printed, typed, drawn, punched, taped, filmed, recorded or graphic matter, including drafts, which is or was in your possession, custody or control, or known to exist by you, including, but not limited to, any account, record, book, pamphlet, brochure, catalog, periodical, publication, advertisement, schedule, list, manual, letter, correspondence, telegram, telephone record, memorandum, contract, lease, invoice manifest, purchase order, ticket, log, computer record, bulletin, study, survey, call report, sales letter, chart, graph, index, data sheet, inter- and intra-company communication, report, plan, work sheet, note, bill, check, bank statement, ledger, journal, travel record, desk calendar, minutes, transcript, accounting record, financial record, bookkeeping record, photograph, tape recording, video tape or other form of data compilation. This definition includes all documents for which privilege is

claimed. If copies, reproductions or facsimiles of a document are not identical by reason of handwritten notations, initials, identification marks or any other modification, each such non-identical copy is a separate document within the meaning of this definition.

4. "Date" means the exact day, month, and year if ascertainable, or, if not, your best approximation thereof.

5. In the context of a Request or a response thereto, wherever necessary to bring within the scope of the Request documents that would otherwise be excluded therefrom, the singular shall mean the plural, and the masculine gender shall mean the feminine, and vice versa.

6. "And" and "or" shall be construed either disjunctively or conjunctively so as to require the inclusion of materials or information that would otherwise be excluded.

7. If you object to, or otherwise decline to respond to any portion of a Request, provide all documents called for by that portion of the Request to which you do not object or to which you do not decline to respond. For those portions of any Request to which you object or otherwise decline to respond, state in detail the reason for such objection or declination.

8. In the event any document, or portion thereof, is withheld by you on the basis of any claim of privilege or of attorney work product, state in writing with respect to each document withheld information sufficient to permit a determination of the validity of that claim, including: (a) the name and position of each author of the document; (b) the name and position of each recipient of the document; (c) the date of the document; (d) the subject matter of the document; and (e) the grounds for the claim of privilege or attorney work product.

9. The terms "relating to," "regarding," and "referring to" shall be interpreted broadly, including both explicit and implicit reference, and meaning (without limitation) relating to, regarding, referring to, constituting, defining, discussing, containing, construing, embodying, reflecting, stating, dealing with, prepared in contemplation of, prepared in connection with, prepared as a result of, or in any way pertaining to.

10. Each Request is of a continuing nature so as to require supplemental responses in accordance with Federal Rule of Civil Procedure 26(e).

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1. Produce all documents defendant was requested to identify in plaintiffs' first set of interrogatories to defendant in this action, all documents relating to defendant's responses to plaintiffs' first set of interrogatories, all documents identified in defendant's Rule 26 (a) (1) initial disclosures, and all documents produced in response to any complaints which plaintiffs have made to any administrative agencies.

REQUEST NO. 2. Produce all documents relating to any evaluation (formal or informal) of plaintiffs.

REQUEST NO. 3. Produce plaintiffs' personnel files and copies of any documents maintained in *any* other files referencing plaintiffs with respect to plaintiffs' health, performance, compensation, or any complaints made by others about plaintiffs, or any complaints which plaintiffs made about others.

REQUEST NO. 4. Produce all documents relating to any written or oral reprimand, warning, or caution, and/or any compliment, award, or commendation, given to plaintiffs or concerning plaintiffs.

REQUEST NO. 5. Produce copies of all correspondence between plaintiffs and defendant, and any correspondence relating to plaintiffs, by or to any of defendant's agents, or any other correspondence relating to plaintiffs, by or to any other person without limitation, concerning plaintiffs.

REQUEST NO. 6. Produce copies of all documents prepared by, or at the direction of, any of defendant's agents relating to plaintiffs.

REQUEST NO. 7. Produce all documents relating to or reflecting any contention by defendant that plaintiffs' performance was unsatisfactory or substandard at any time while in defendant's employ.

REQUEST NO. 8. Produce all documents relating to or supporting all of defendant's denials of any allegations in plaintiffs' Complaint, as well as any documents relating to or supporting each Affirmative or General Defense asserted by defendant.

REQUEST NO. 9. Produce all documents relating to plaintiffs' damages, including any documents supporting any contention that plaintiffs are *not* entitled to all or part of any damages claimed in plaintiffs' complaint.

REQUEST NO. 10. Produce all time, sick, vacation, attendance and leave schedules and/or sign-in sheets which directly refer to plaintiffs.

REQUEST NO. 11. Produce complete copies of all documents prepared by plaintiffs, authored by plaintiffs and/or signed by plaintiffs which criticize or complain about defendant or defendant's employees.

REQUEST NO. 12. Produce complete copies of all documents prepared by defendant, authored by defendant and/or signed by defendant's employees which respond to any criticisms or complaints leveled by plaintiffs about defendant or defendant's employees.

REQUEST NO. 13. Produce all documents relating to defendant's alleged legitimate business reasons for any alleged adverse employment actions complained of in plaintiffs' Complaint, including any investigations of plaintiffs' claims of harassment and retaliation.

REQUEST NO. 14. Produce copies of any employee handbooks, employee contracts or personnel manuals disseminated by defendant during plaintiffs' employment with defendant, and

any collective bargaining agreements which defendant has entered into with plaintiffs' union, if any, during plaintiffs' employment with defendant which relate to plaintiffs' employment with defendant.

REQUEST NO. 15. Produce plaintiffs' hire/appointment letters, if any.

REQUEST NO. 16. Produce all documents relating to the terms of plaintiffs' employment with defendant and the job functions which defendant once expected plaintiffs to perform while so employed, including, but not limited to, any job descriptions.

REQUEST NO. 17. Produce all documents which show that current and/or former employees, other than plaintiffs, who are or were similarly-situated to plaintiffs, have filed internal complaints with defendant, have filed complaints with any public agency, have filed any grievances, have requested any arbitrations, or have filed any court actions, charging defendant with one or more of the causes of actions alleged in plaintiffs' complaint at any time in the past five years to the present.

REQUEST NO. 18. Produce all documents which show that plaintiffs have filed internal complaints with defendants, have filed complaints with any public agency, have filed any grievances, have requested arbitrations, have filed any Court actions, other than the instant case, charging defendants with one or more of the causes of actions alleged in the Complaint in the instant case at any time in the past five (5) years to present.

REQUEST NO. 19. Produce all documents which show that defendant exercised reasonable care to prevent the actions complained about in the instant complaint.

REQUEST NO. 20. Produce all documents which show that defendant took reasonable measures to correct the actions complained about in the complaint.

REQUEST NO. 21. Produce all documents which evince and show defendant's ability or inability to pay punitive damages.

REQUEST NO. 22. Produce all financial statements which evince and show defendant's profits and proceeds from 2003 to the present, and defendant's ability to pay punitive damages.

REQUEST NO. 23. Produce all documents which evince and show plaintiffs' salary, pay and benefits whilst employed with defendant.

REQUEST NO. 24. Produce all notes, adopted statements and affidavit of all individuals defendant have interviewed in connection with its investigations of plaintiffs' claims.

REQUEST NO. 25. Produce all documents which evince and show the names, national origins, races and qualifications of all employees who replaced plaintiffs after their terminations.

REQUEST NO. 26. Produce all documents which evince and show the names, national origins, races, and qualifications of all similarly-situated individuals, who remained employed by defendant, after plaintiffs' terminations.

REQUEST NO. 27. Produce all documents which evince and show the names, national origin, races and qualifications of all similarly-situated individuals who defendant hired after plaintiffs' termination.

REQUEST NO. 28. Produce all documents which evince or show that similarly-situated employees engaged in any misconduct, and committed any violations of defendant's rules while plaintiffs were employed with defendant leading to any disciplinary matters.

REQUEST NO. 29. Produce all documents which evince or show any responses of defendants to any investigations undertaken by any public agencies concerning any complaints by plaintiffs or any facts which concern plaintiffs.

REQUEST NO. 30. Produce all W2s and all time cards showing plaintiffs' rates of pay at all times plaintiffs were employed by defendant.

Dated: New York, New York
July 31, 2007

Respectfully Submitted, 

Ambrose Wotorson (AWW-2412)
Law Offices of Ambrose Wotorson, PC
26 Court Street, Suite 1811
Brooklyn, New York 11242
(718) 797-4861

EXHIBIT C

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....x

ANGEL VARGOS, FELIX BONILLA,
RYAN MCKENZIE, BERNARDO RAMIREZ AND
SIMON NORALES,

Plaintiffs,

against

MIDTOWN AIR CONDITIONING &
VENTILATION, LTD.,

Defendant.

.....x

2 Penn Plaza
New York, New York

December 10, 2007
10:15 A.M.

DEPOSITION of ANGEL VARGOS, one of the
Plaintiffs, taken by the Defendant, pursuant to Order,
held at the above-noted time and place, before a Notary
Public of the State of New York.

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Angel Vargas

166

A Yes.

Q Did you get contacted by the
Comptroller's Office before they ever came to the
work site?

A No.

They were on the work site. They were
in our shack where we were.

When I came into the shack, they
asked, do you work for Midtown?

Before they did that, they showed me a
badge.

Q Was this before or after this letter
was written?

A That is way before.

Q Way before?

A Yes, way before.

Q How long before?

A I think maybe it was April. I think
it was May.

I can't recall at this time.

Q You think approximately?

A Because that's when I filed the
complaint.

Q You think that you filled out the

1 Angel Vargas 167

2 complaint about one month after they spoke to you
3 at the work site or was it longer?

4 MR. WOTORSON: Objection to the form.

5 A I was talking to them in May. I
6 talked to them.

7 Q So that is when they came?

8 A It was in May.

9 Q Do you think that it was in May?
10 Could it have been in April?

11 A Could be May. It could be at the end
12 of April.

13 Q After they came to the work site in
14 May, did you have any conversation with Roman
15 Liberstein about your conversation with the
16 Inspectors?

17 A He knew that they came to us because I
18 think Simon said something also about that to the
19 Comptroller's Office.

20 Everybody knew that they were there.
21 Because all of the locals knew all about it.

22 Q Did you talk to Roman about this?

23 A Yes, we told him.

24 Q You specifically.

25 I'm not talking about anyone else.

1 Angel Vargas 168

2 But you and Roman. Did you have a
3 conversation with Roman about the Inspectors?

4 A Yes.

5 He was outside. I said, you see the
6 Comptroller's Office is here?

7 He looked around and he smiled and
8 that was it.

9 He didn't say nothing.

10 Q Did you tell Roman what the Inspectors
11 wanted?

12 A No.

13 Because he never asked.

14 Q Did you tell Roman that you told them,
15 the Inspectors, how much you were being paid?

16 A I told him that we were underpaid.

17 Q You told Roman that you were
18 underpaid?

19 A Yes.

20 Q After they came the first time, when
21 was the next time that they came to the work site?

22 A It was in May also.

23 The following week or so.

24 Q On that day, did you give them any of
25 your pay statements?

1 Angel Vargas 169

2 A No.

3 I just called them that I wanted to
4 file a complaint.

5 Q Did you ever give the New York City
6 Comptroller's Office your pay stub?

7 A Yes, I did.

8 Q When did you do that?

9 A At the time when I signed the
10 complaints.

11 Q How many times did the New York City
12 Comptroller's Office Inspectors come to the work
13 site in total?

14 A To my recollection, twice.

15 Q Both times in May or maybe late April?

16 A Could be April and May.

17 I can't recall at this time.

18 Q After that you requested copies of the
19 Prevailing Wage Complaint Forms?

20 Is that correct?

21 A Correct.

22 Q Did you give those Complaint Forms to
23 your co-workers?

24 A Yes.

25 Q The document that was marked as

1 Angel Vargas 170

2 Defendant's 17, do you recall receiving that
3 document?

4 A Yes.

5 Q So sometime between June 8, 2005 and
6 July 13, 2005, you filed your complaint, right?

7 A Yes.

8 It was 2005. Correct.

9 May or April. I'm not sure.

10 MR. CAPOZZOLA: Let's mark this
11 document as Defendant Vargas Exhibit 19.

12 This is Bates stamped AWW000173.

13 (Whereupon, Prevailing Wage Job Sheet
14 was marked as Defendant Vargas Exhibit 19
15 for Identification, as of today's date.)

16 Q Is this a document that you have
17 prepared?

18 A Yes, it is.

19 Q What does this document represent?

20 A This represents the prevailing wages
21 jobs that we were doing.

22 Q Did you give this document to anyone
23 other than your lawyer in connection with this?

24 A To my lawyer only.

25 Q You never gave it to the New York City

1 Angel Vargas 171

2 Comptroller's Office?

3 A Yes.

4 They have it.

5 Q Do they have a copy of this document?

6 A Not this one.

7 But they have all of the names down.

8 Yes, they do.

9 Q Did the New York City Comptroller's
10 Office address the items three and four, Chelsea
11 Recreation Center and the rehabilitation of Engine
12 Company 93?

13 MR. WOTORSON: Objection to the form.

14 Q Let me ask that again.

15 Did you talk to the inspectors about
16 the Chelsea Recreation Center job?

17 A No.

18 I just wrote it down and gave it to
19 them.

20 Q Did you talk to them about the
21 rehabilitation of Engine Company 93?

22 A Yes.

23 I mentioned that also. That we worked
24 there.

25 -Q Did you talk to them about it?

1 Angel Vargas 172

2 A Yes, I did.

3 I told them also that we worked there.

4 Q What did they say?

5 A They didn't say anything.

6 They were just dealing with the Ninth
7 Precinct at that time.

8 Q Did you talk to them about the
9 Excellence Charter School?

10 A No.

11 Because when I filed the Complaint --

12 MR. WOTORSON: He asked you did you
13 talk with them about the Excellence Charter
14 School.

15 THE WITNESS: No.

16 Q Did you believe that the Excellence
17 Charter School was a prevailing wage job?

18 A Yes, it was.

19 Q Why did you believe that?

20 A Because it was the same CC Division
21 that works for the City.

22 Q What do you mean CC Division?

23 A DDC.

24 Q Do you know what that stands for?

25 A That is for any time that there is a

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO. 07-3343

ANGEL VARGAS, FELIX BONILLA, :
RYAN McKENZIE, BERNARDO :
RAMIREZ and SIMON NORALES, :

Plaintiffs, :

-vs- :

MIDTOWN AIR CONDITION AND :
VENTILATION, LTD., :

Defendant. :

DEPOSITION OF

SIMON NORALES

-----X

TRANSCRIPT of stenographic notes

taken in the above matter before CHARLES P. McGUIRE, a
Certified Shorthand Reporter and Notary Public, at 521 Fifth
Avenue, New York, New York, on Wednesday, November 28, 2007,
commencing at 10:16 a.m.

BRAZAITIS, HALPERIN & STONE
CERTIFIED SHORTHAND REPORTERS
POST OFFICE BOX 22363
NEWARK, NEW JERSEY 07101

(973) 994-2940

ORIGINAL

1 A. No, sir.

2 Q. Did you ever speak to a representative of
3 the Department of Labor?

4 A. No, sir.

5 Q. Did a representative from the Department of
6 Labor ever come to the Ninth Precinct?

7 A. No.

8 Q. What about the New York City Comptroller's
9 Office?

10 A. Yes.

11 Q. Did you make a complaint to the New York
12 City Comptroller's Office?

13 A. After they lay me off, or before?

14 Q. Before.

15 Let me withdraw the question.

16 Will you look back at your complaint again,
17 please?

18 (Noraes Exhibit 2 was placed before the witness.)

19 Q. Can you look at page nine?

20 Paragraph e states: "An Inspector from the
21 New York City Comptrollers Office visited the site on June
22 2005. Simon Noraes spoke with the inspector and the
23 inspector told plaintiff that he was being underpaid."

24 Is this paragraph true?

25 A. Yes, that's true.

1 Q. Do you remember the name of the inspector?

2 A. There was two guys, but I can't remember names. I
3 don't remember the name now.

4 Q. Were they men or women?

5 Were they men or women?

6 A. Yes, one man and one -- one woman.

7 Q. Did they come to the Ninth Precinct before
8 or after you were sent to the Mt. Kisco project?

9 A. Well, they came -- they came three or one week
10 before I came for vacation. But they came, and I was there.
11 After -- after we came from vacation, they come. They spoke
12 to -- to the project -- the Ninth Precinct, the construction
13 guy, the manager of construction, who have the -- all the --
14 the super, we call it the supervisor --

15 Q. The general contractor?

16 A. The general contractor, right. They talk to him,
17 and they ask if all these guys, all these workers in the
18 project, they have the salary, whatever the Comptroller of
19 the City have to pay them. And then he -- he started
20 looking for the list where we sign, and then he see me down
21 there, and he started looking for people from Midtown lines,
22 and then he go to my trailer, where I have my office, and
23 then he -- he saw a couple of check payment, so we got paid
24 Monday. He saw that in the table, in my table. And from
25 that point that he saw it, we not was making the money what

1 we supposed to make.

2 And he started questioning me. And he
3 showed me something like a badge, like a cop. And from
4 there, I call all the rest the guys, and we started talking
5 about what we make, how much the money was, the salary, how
6 many hour we make, all this stuff like that.

7 Q. You said this was within a week of your
8 returning from vacation?

9 A. Yes, sir.

10 Q. What vacation was that?

11 A. Work vacation.

12 Q. Do you remember the date?

13 A. I don't remember the date, but it was in June --
14 June or July, something like that. I was came from
15 vacation.

16 Q. June or July of 2005?

17 A. Yes. Yes, I came from vacation. I remember that.

18 Q. The first time that an investigator showed
19 up at the Ninth Precinct, was there one or two of them?

20 A. Two.

21 Q. Did they take a written statement from you
22 on the first date?

23 A. No.

24 Q. They spoke to you, though; right?

25 A. Yes.

1 Q. Did they speak to anyone else?

2 A. They speak to Vargas; they speak to Tony, a
3 steamfitter; Deon, a steamfitter, work for Midtown, too.
4 Deon. He worked for Midtown, but he's not type sheet metal.
5 Steamfitter. And they speak to all these guys. The rest of
6 them I forgot.

7 Q. Did they speak to Bonilla?

8 A. Speak to Bonilla, too. He was there, he speak to
9 me when he was there. He was -- Bernardo was there, too.
10 He was -- Eddie Pilot, he was there. Papa, he was there.
11 Alex Chacha, he was there.

12 Q. What about Ryan McKenzie?

13 A. Ryan McKenzie was there, too.

14 Q. So after this visit, when was the next time
15 you had any discussions with the Comptroller's Office?

16 A. I told him I was supervisor, Roman, he was not
17 there, and we can't -- we can't take a decision from
18 nothing.

19 And then he asked with others our company
20 and how we can -- how he can meet Roman. And he come back
21 another -- another two days, three days, something like
22 that, later.

23 Q. Did you talk to Roman about your first
24 discussion with the --

25 A. Yes, sir.

1 Q. -- inspector?

2 A. Yes, I talked to him.

3 Q. What did you tell him?

4 A. I told him, Roman, it is the inspector here for the
5 City, and they were show us paper, we was making less money
6 we're supposed to make. I don't want to say nothing to
7 them, but if you can fix this payment for us -- to us to
8 cover the rest of the money what we supposed to make and we
9 don't -- we don't have to -- we don't have to sign or -- or
10 talk to this guy because this guy, he say my tap to my back.

11 And Roman answer me, I don't know, I can't
12 answer you, because this guy just a foolish -- you know,
13 just like that. They come over here, try to do this. We
14 don't -- we don't go with that. We don't go with whatever
15 they do. We don't go with that.

16 So I say, Okay, fine.

17 Q. So he said he would come back a couple days
18 later, --

19 A. Yes.

20 Q. -- the inspector?

21 A. Yes.

22 Q. Did he?

23 A. Yes, they come back, yes.

24 Q. Is this the next time you saw them?

25 A. Yes. All the rest the time, the payments, that we

1 make, we tell them how much we make, and how much less money
2 they was taking for our Saturday.

3 Q. Did they take these -- were these pay stubs
4 you were showing them?

5 A. Pay stubs, yes. Pay stubs, yes.

6 Q. Did they take copies?

7 A. Yes.

8 Q. Did anything else happen that day with the
9 inspectors?

10 A. Yes, it was the lady and the man.

11 Q. So the lady and the man came, they talked
12 to you, they took pay stubs.

13 Did anything else happen that day with
14 regard to this?

15 A. No, that's it. That was all that happened.

16 Q. When's the next time that you saw the
17 inspectors?

18 A. When I saw them, and they tell us they send us
19 papers, if we want to sign it, to sign it. They going to
20 send the papers to our address, our home.

21 Q. To your home?

22 A. Home, yes.

23 Q. So they -- did they send complaint forms to
24 your home?

25 A. Yeah. Yes.

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CIVIL ACTION NO. 07-3343

ANGEL VARGAS, FELIX BONILLA, :
RYAN MC KENZIE, BERNARDO :
RAMIREZ & SIMON NORALES, :

Plaintiffs, :

-v- :

MIDTOWN AIR CONDITION AND :
VENTILATION, LTD., :

Defendant. :

x - - - - - x

DEPOSITION OF:

RYAN MC KENZIE

T R A N S C R I P T of the stenographic
notes of the proceedings taken by and before JOHN
KEVIN STONE, a Certified Shorthand Reporter and
Notary Public of the State of New Jersey at the
offices of OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, ESQS., 521 5th Avenue, New York City, New
York 10175, on Monday, November 19, 2007,
commencing at 11:00 a.m.

A P P E A R A N C E S:

AMBORSE WOTORSON, ESQ.,
26 Court Street, Suite 1811
Brooklyn, New York 11242
Attorney for the Plaintiffs

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, ESQS.,
BY: DOMINICK CAPOZZOLA, ESQ.,
521 5th Avenue, Suite 1700
New York, New York 10175
Attorney for the Defendant

BRAZAITIS, HALPERIN & STONE
P.O. Box 22363
Newark, New Jersey 07101
(973) 994-2940

1 A I think it was earlier on during the
2 project. Early to midway, I guess.

3 Q Was it before or after the Department
4 of Labor charge?

5 A Might have been before.

6 Q But you don't know?

7 A Might have been before.

8 Q Do you remember when the Department
9 of Labor charge was made?

10 A They came around, I would say in the earlier
11 part of the job.

12 Q How long was the job?

13 A It was over a year.

14 Q Can you put a month on the -- well,
15 strike it.

16 How did this situation start with the
17 Department of Labor?

18 A What situation?

19 Q The charge. How did -- how did this
20 process begin?

21 A Okay.

22 There were investigators from the
23 comptroller's office that came on the job.

24 Q Do you remember their name?

25 A Jennifer Coraleo. Coraleo or something

1 Q Anyone else?

2 A She had a partner with -- I don't remember
3 his name at the time.

4 Q Okay.

5 So investigators from the
6 comptroller's office came?

7 A Hhmm-hmm.

8 Q Do you remember when that was?

9 A That was the earlier part of the job. It
10 might have been -- oh, my goodness. Was it '04 --
11 '04, '05. You know what, I'm not sure exactly.

12 Q You think at least a year before?

13 A It was the earlier part of the job.

14 Q At least a year before your
15 termination you think?

16 A Yeah.

17 Q And then what happened next?

18 A They came on the job, they asked questions,
19 they asked for pay stubs.

20 Q This was all at the same time, all
21 very early in the project?

22 A No, can't -- yeah, all at the same time,
23 very early in the project.

24 Q Did you give them any pay stubs?

25 A Yes, I did.

1 Q Did you talk to them?

2 A Did I what?

3 Q Did you talk to them as well?

4 A Yes, they spoke to us.

5 Q Do you remember what you said?

6 A Said to what?

7 Q To the investigators.

8 A I answered their questions.

9 Q Did they address you as a group?

10 A Yes.

11 Q Who else was in the group?

12 A Everybody that's involved in this case.

13 Q Anyone else?

14 A No.

15 Q So it was you, Angel, Felix, Bernardo

16 and Simon. Correct?

17 A Simon. (Indicates affirmative).

18 Q And they asked you about what you

19 were getting paid for the job?

20 A Yes.

21 Q And they asked to see your pay stubs?

22 A Yes.

23 Q And then they left. Correct?

24 A Yes.

25 Q And then what happened?

1 A I think they came a couple of times.

2 Q What happened the next time they
3 came?

4 A That's when they asked for the pay stubs.
5 They came back for the pay stubs.

6 Q And then what happened -- is that all
7 that happened that time?

8 A Yeah. Pretty much.

9 Q And then what happened the next time
10 they came?

11 A They just came just to do a follow-up, I
12 guess, because we were -- you know, we were
13 apprehensive about turning in the pay stubs.

14 Q Why?

15 A We feared being retaliated against.

16 Q When did the -- strike that.

17 Did you personally fill out paperwork
18 for the Department of Labor?

19 A Did I personally fill out paper work? The
20 paperwork -- the paperwork -- I don't remember at
21 this time if there was a paper that was to be
22 filled out.

23 Q Do you know that Midtown -- strike
24 that.

25 In the complaint at paragraph 11 E it

EXHIBIT F

Alliance Reporting Service, Inc.



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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 x
5 ANGEL VARGAS, FELIX BONILLA,
6 RYAN MCKENZIE, BERNARDO RAMIREZ AND
7 SIMON NORALES,

8 Plaintiffs,

9 - against -

10 MIDTOWN AIR CONDITIONING AND
11 VENTILATION, LTD.,

12 Defendant.

13 x
14
15 2 Penn Plaza
16 New York, New York

17 December 3, 2007
18 11:20 A.M.

19 DEPOSITION of BERNARDO RAMIREZ, one of the
20 Plaintiffs, taken by the Defendant, pursuant to Order,
21 held at the above-noted time and place, before a Notary
22 Public of the State of New York.

1 Bernardo Ramirez 162

2 Bureau of Labor Law?

3 A Say that again.

4 Q Is that a letter to you from the
5 Bureau of Labor Law?

6 A Yes.

7 MR. WOTORSON: Note my objection.

8 Q The document is dated July 28, 2005.
9 Is that correct?

10 A Yes.

11 Q Is that document in response to your
12 complaint to the Comptroller's Office?

13 A Yes.

14 Q So, would you agree then that you must
15 have complained sometime before July 28, 2005?

16 A Say that again.

17 Q Do you agree that you must have
18 complained sometime before July 28, 2005?

19 A Yes.

20 Can I have a break now, please?

21 MR. CAPOZZOLA: Sure.

22 Off the record.

23 (Whereupon, a brief recess was taken
24 off the record.)

25 Q How did you first get in touch with

1 Bernardo Ramirez 163
2 the New York City Comptroller's Office about this
3 complaint?

4 A They showed up to the place where we
5 were working.

6 Q Do you recall when that was?

7 A Sometime it started in 2005.

8 Q The beginning of 2005?

9 A Yes.

10 Q Do you recall who showed up?

11 A An investigator from the City.

12 Q Did you speak to that investigator?

13 A No.

14 Q Was that a man or woman?

15 A A man.

16 Q Who did the investigator speak with,
17 if you know?

18 A Simon.

19 Q Did he talk to anyone else?

20 A No.

21 Q What is the next thing that happened
22 that led you to filing your complaint?

23 A We find out that Midtown don't pay us
24 the right money.

25 And we know they owe us some money.

1 Bernardo Ramirez 164

2 Q How did you find out that Midtown owed
3 you money?

4 A Because they supposed to pay us more.

5 Q Who told you that Midtown would owe
6 you more money?

7 A Me.

8 I speak to the guy from Local 28 and
9 they tell me how much they supposed to pay us.

10 Q Did you talk to the person from Local
11 28 before or after the Investigator showed up?

12 A After the Investigator showed up.

13 Q So the first thing that happened is
14 the Investigator showed up and then you talked to
15 someone from Local 28?

16 A Yes.

17 Q Then what happened next?

18 A We go to the Investigator.

19 Q Did you call the Investigator?

20 A No.

21 Q Did the Investigator show up?

22 A Yes.

23 We call him.

24 Q So you called the investigator and you
25 asked the Investigator to come to the work site?

1 Bernardo Ramirez 165

2 A No.

3 We call to Investigator to ask about,
4 what about how we're going to make the complaint.

5 Q What did the Investigator say to you?

6 A He bring us the form.

7 Q Did he bring you the forms to the work
8 site?

9 A No.

10 Q Did he mail them to you?

11 A Yes.

12 Q Was there ever a time between the
13 Investigator first showing up at the beginning of
14 2005 and the Investigator mailing you the forms,
15 that you talked to the investigators -- or pardon,
16 Investigator, at the work site?

17 A No.

18 Q So, before you filed your complaint,
19 how many times did you speak to the Investigator?

20 A About two times.

21 Q Two times?

22 A Yes.

23 Q When was the first time that you spoke
24 with the Investigator?

25 A After I received the -- Angel speak

1 Bernardo Ramirez 166

2 with the Investigator from the City.

3 And send us the applications.

4 After I received the application, I
5 called the Investigator.

6 Q What did you talk to this Investigator
7 about?

8 A How we were going to fill out the
9 document.

10 Which documents I need to send for.

11 Q How much time past between the time
12 that the first Investigator showed up and the time
13 that you actually filed the documents?

14 A About three months.

15 Q Did you ever talk to anyone at Midtown
16 about the fact that you filed a complaint with the
17 Department, with New York City?

18 A No.

19 Q Did you ever talk to Roman Liberstein
20 about the fact that you spoke to an Investigator?

21 A No.

22 Q Let's go back to Exhibit 4.

23 Look at page 7 of your Amended
24 Complaint. Paragraph E.

25 It says, an Inspector from the New

EXHIBIT G

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

.....x

ANGEL VARGAS, FELIX BONILLA, RYAN McKENZIE,
BERNARDO RAIMREZ and SIMON NORALES,

Plaintiffs,

- against -

MIDTOWN AIR CONDITIONING AND VENTILATION,
LTD.,

Defendant.

.....x

2 Penn Plaza
New York, New York

December 17, 2007
10:30 A.M.

DEPOSITION of FELIX BONILLA, one of
the Plaintiffs herein, taken by the Defendant,
pursuant to Order, held at the above-noted time
and place, before a Notary Public of the State of
New York.

* * * *

1 Bonilla

2 Defendant Bonilla Exhibit 5 for identification,
3 as of this date.)

4 Q I'm handing you now a document marked
5 as Exhibit 5.

6 Are these copies of documents that you
7 gave to your lawyer?

8 A Yes.

9 Q Can you tell me what these documents mean?

10 MR. WOTORSON: Objection to the form.

11 A I don't know.

12 Q Do you recall why Midtown gave you these
13 documents?

14 A I don't remember.

15 Q Did Midtown give you these documents?

16 A Yes.

17 Q Do you know why they gave you these
18 documents?

19 A No.

20 Q At some point in 2004 or 2005, an inspector
21 came to the precinct job. Is that correct?

22 A Yes.

23 Q Were you working there at that time?

24 A Yes.

25 Q Do you recall what date approximately

1 Bonilla

2 that was?

3 A I don't remember.

4 Q Did you talk to the inspector the first
5 day?

6 It was a woman, right?

7 A They asked --

8 Q Let me ask it again. Was the inspector
9 that came the first time a man or woman?

10 A Male.

11 Q Did you speak to the inspector that day?

12 A He only asked --

13 Q He only asked what?

14 A How much we were making. How much we
15 were being paid. How much I was making.

16 Q Did you speak to him privately or did
17 you speak to him with other workers?

18 MR. WOTORSON: Objection to the form.

19 A I don't know. I don't remember.

20 Q He asked you how much money you were
21 making and how much Midtown was paying you, is
22 that correct?

23 A Yes, of course.

24 Q What did you say?

25 A I showed him my pay stub.

1 Bonilla

2 Q Did you have your pay stubs with you
3 on the first day that the inspector came?

4 A I always have my last pay stub in my
5 wallet. My latest pay stub.

6 Q Why do you do that?

7 A To compare it with the hours.

8 Q Did you let the inspector have a copy
9 of your pay stub?

10 A I showed it to him.

11 Q But, you kept it. Is that correct?

12 A Correct. Yes.

13 Q Did you and the inspector talk about
14 anything else that day?

15 A No.

16 Q Did the inspector ever come back to
17 the work site?

18 A The inspector would always arrive.

19 Q How many times do you think that the
20 inspector went to the work site?

21 A I don't know.

22 Q Was it more or less than five?

23 A The thing is that various inspectors
24 would arrive there.

25 Q Adding all the inspectors together,

1 Bonilla

2 was it more or less than five?

3 A I don't know.

4 Q Did you talk to Roman Lieberstein
5 about the fact that an inspector had come?

6 A He was aware.

7 Q I understand that. But I want to know
8 if you ever talked to Roman Lieberstein about it?

9 A I didn't have to speak with him.

10 Q Does that mean that you did not speak
11 to him?

12 A Correct.

13 Q At any time during your employment
14 with Midtown, did you talk to Roman Lieberstein
15 about the fact that inspectors had come to the
16 work site?

17 A No.

18 Q Did you ever talk to Igor, your supervisor
19 about that?

20 A No.

21 Q Did you ever talk to Ilya Brodsky about
22 it?

23 A No.

24 Q You filed a complaint with the New York
25 City Comptroller's office, is that correct?